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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NICHOLAS JAMES WILLING,

Petitioner,

v.

BRIAN E. WILLIAMS, SR., et al.,

Respondents.

Case No. 2:14-cv-01194-RFB-CWH

**UNOPPOSED MOTION FOR AN
ENLARGMENT OF TIME IN
WHICH TO FILE A SECOND
AMENDED PETITION**

(First Request)

Petitioner Nicholas Willing moves this Court for an extension of ninety (90) days, from April 28, 2016, to and including July 27, 2016, to file a Seconded Amended Petition for Writ of Habeas Corpus. This motion is based upon the following

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declaration of counsel and the record in this case.

DATED this 28th day of April, 2016.

FEDERAL PUBLIC DEFENDER
DISTRICT OF NEVADA

/s/T. Kenneth Lee
T. KENNETH LEE
Assistant Federal Public Defender

DECLARATION OF T. KENNETH LEE

1. On February 1, 2012, a Third Amended Information was filed against Mr. Willing, wherein he was charged as follows: burglary with use of a deadly weapon (count 1); robbery with use of a deadly weapon (count 2); first degree kidnapping with deadly weapon (count 3); first degree kidnapping with deadly weapon (count 4); first degree kidnapping with deadly weapon (count 5); grand larceny with deadly weapon (count 6); grand larceny of firearm(s) with deadly weapon (count 7); battery with intent to commit grand larceny (count 8); assault with a deadly weapon (count 9); assault with a deadly weapon (count 10); assault with a deadly weapon (count 11); and conspiracy to commit robbery (count 12). On February 3, 2012, a jury found Mr. Willing guilty on all counts. Mr. Willing was sentenced as follows: count 1 – a maximum term of 120 months with parole eligibility after 48 months; count 2 – a maximum term of 180 months with parole eligibility after 72 months, to be run consecutively with a maximum term of 180 months with parole eligibility after 72 months on the deadly weapon enhancement; count 3 – a maximum term of 150 months with parole eligibility after 60 months, to be run consecutively with a maximum term of 150 months with parole eligibility after 60 months on the deadly weapon enhancement; count 4 – a maximum term of 150 months with parole eligibility after 60 months, to be run consecutively with a maximum term of 150 months with parole eligibility after 60 months on the deadly weapon

enhancement; count 5 – a maximum term of 150 months with parole eligibility after 60 months, to be run consecutively with a maximum term of 150 months with parole eligibility after 60 months on the deadly weapon enhancement; Count 6 – a maximum term of 120 months with parole eligibility after 48 months, to be run consecutively with a maximum term of 120 months with parole eligibility after 48 months on the deadly weapon enhancement; count 7 – a maximum term of 120 months with parole eligibility after 48 months, to be run consecutively with a maximum term of 120 months with parole eligibility after 48 months on the deadly weapon enhancement; count 8 – a maximum of 120 months with parole eligibility after 48 months; count 9 – a maximum term of 30 months with parole eligibility after 12 months; count 10 – a maximum term of 30 months with parole eligibility after 12 months; count 11 – a maximum term of 30 months with parole eligibility after 12 months; and count 12 – a maximum sentence of 72 months with parole eligibility after 28 months. The court sentenced Mr. Willing to an aggregate sentence of 72 years with parole eligibility after 30 years. The Nevada Department of Corrections is currently housing Mr. Willing at Southern Desert Correctional Center in Indian Springs, Nevada.

2. On November 13, 2015, the Federal Public Defender was appointed as counsel for Mr. Willing. Clerk' Record (CR) 37. On December 16, 2015, I (T. Kenneth Lee) filed a Notice of Representation. CR 38. This Court then ordered the

Federal Public Defender Office to file Mr. Willing's Second Amended Petition within ninety (90) days, up to and including April 28, 2016. CR 39. Mr. Willing now requests an additional ninety (90) days, up to and including July 27, 2016. This is a first request for an extension of time.

3. Since counsel's appointment to this case, counsel's office has been in the process of ordering, gathering and organizing the state court record, including all discovery and prior counsel files, which has taken time due to prior counsel's unavailability. These documents are then electronically imaged in accordance with the case management and handling procedures set in place by the non-capital habeas unit.
4. Once all of Mr. Willing's documents are obtained and undersign counsel reviews them, counsel will be able to discuss the issues with Mr. Willing. After counsel's meeting with Mr. Willing, he anticipates holding an initial case meeting with the unit chief. The initial case meetings are routine in the Non-Capital Habeas Unit and give us an opportunity to discuss the complexities of this matter with the unit chief, and to determine if resources will be needed for investigation and/or expert witnesses.
5. Due to the above, an extension of time is necessary to provide counsel sufficient time to (1) to obtain and scan Mr. Willing's documents and file; (2) have a discussion with Mr. Willing; (3) allow for the consultation with the unit chief;

(4) allow counsel an opportunity to review of the record; and (5) allow counsel sufficient time to draft the second amended petition.

6. Counsel for Petitioner contacted Deputy Attorney General Jeffrey Conner concerning this request for an extension of time. Mr. Conner had no objection to the request for an extension of time, with the caveat that nothing about the decision not to oppose Petitioner's extension request signifies an implied finding of a basis for tolling any applicable period of limitations or the waiver of any other procedural defense. Petitioner at all times remains responsible for calculating any limitations periods and understands that, in granting an extension request, the Court makes no finding or representation that the petition, any amendments thereto, and/or any claims contained therein are not subject to dismissal as untimely.
7. This motion is not filed for the purpose of delay, but in the interests of justice, as well as in the interest of Mr. Willing. Counsel respectfully requests that this Court grant the request for an extension of time to file the second amended petition July 27, 2016, in order for the effective and thorough representation of Mr. Willing in his federal habeas action.

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8. Counsel for petitioner respectfully requests that this Court grant this motion and order Petitioner to file his second amended petition no later than July 27, 2016.

DATED this 28th day of April, 2016.

Respectfully submitted,

/s/T. Kenneth Lee

T. KENNETH LEE

Assistant Federal Public Defender

ORDER

IT IS SO ORDERED.



RICHARD F. BOULWARE, II
United States District Judge

DATE: June 29, 2016.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the office of the Federal Public Defender for the District of Nevada and is a person of such age and discretion as to be competent to serve papers.

That on April 28, 2016, she served a true and accurate copy of the foregoing to the United States District Court, who will e-serve the following addressee:

Jeffrey M. Conner
Deputy Attorney General
100 North Carson Street
Carson City, NV 89701
jconner@ag.nv.gov

/s/ Jineen DeAngelis

An Employee of the Federal Public
Defender, District of Nevada